

STATE OF MICHIGAN  
COURT OF APPEALS

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In the Matter of GABRIELLE JOY POTTER,  
Minor.

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DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

JASON POTTER,

Respondent-Appellant,

and

WHITNEY SMITH,

Respondent.

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UNPUBLISHED

July 26, 2007

No. 274781

St. Joseph Circuit Court

Family Division

LC No. 05-000694-NA

Before: White, P.J., and Zahra and Fort Hood, JJ.

MEMORANDUM.

Respondent-appellant appeals as of right from the trial court order terminating his parental rights to the minor child under MCL 712A.19b(3)(g) and (j). We affirm.

Respondent-appellant was not denied fundamental fairness and due process when the court did not hold an adjudicative phase of the proceedings with regard to respondent-appellant and did not appoint an attorney for him until the petition for termination of respondent-appellant's parental rights was filed. Petitioner dropped all allegations in the original petition concerning respondent-appellant at the initial hearing and agreed that there were no allegations against him. The court assumed jurisdiction on the basis of the mother's admissions. MCR 3.965(B)(11). Thus, respondent-appellant was not a "respondent," as defined in MCR 3.903(C)(10), until the petition for termination of his parental rights was filed. At that point, an attorney was appointed for him. Under MCL 712A.6, a court may make orders it deems necessary for the physical, mental, or moral health of a child under its jurisdiction. *In re CR*, 250 Mich App 185, 200; 646 NW2d 506 (2001). Therefore, the court had the authority to make orders regarding respondent-appellant, even though he was not a respondent at that time and was not represented by counsel.

Further, the trial court did not clearly err in finding clear and convincing evidence to support the statutory grounds for termination. *In re McIntyre*, 192 Mich App 47, 50: 480 NW2d 293 (1993); MCR 3.977(J). Respondent-appellant lacked anger control, evidenced by his prior incarcerations, his arrest for trying to run over a woman with his truck, substantiated physical abuse against the minor child's half-siblings, and other allegations against him by the child's mother and his own mother. He used illicit drugs, as evidenced by his prior conviction for maintaining a methamphetamine lab and the fact that he tested positive for cocaine when he was arrested for assaulting his mother. At the time of the termination hearing, he had not yet begun an anger management class. The fact that he had mostly complied with his parent/agency agreement for the approximately two months since his release from jail was not sufficient to prove that he could maintain a drug-free and violence-free lifestyle.

Finally, the trial court did not clearly err in finding that the child's best interests did not preclude termination of respondent-appellant's parental rights. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 353-355; 612 NW2d 407 (2000).

Affirmed.

/s/ Helene N. White

/s/ Brian K. Zahra

/s/ Karen M. Fort Hood